

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ASHLEY L.,

Plaintiff,

v.

ANDREW M. SAUL, Commissioner
of Social Security,

Defendant.

NO. 2:20-CV-0077-TOR

ORDER DENYING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT AND GRANTING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

BEFORE THE COURT are the parties' cross-motions for summary judgment (ECF Nos. 11-12). This matter was submitted for consideration without oral argument. The Court has reviewed the administrative record and the parties' completed briefing, and is fully informed. For the reasons discussed below, the Court **DENIES** Plaintiff's motion and **GRANTS** Defendant's motion.

JURISDICTION

The Court has jurisdiction pursuant to 42 U.S.C. §§ 405(g), 1383(c)(3).

1 STANDARD OF REVIEW

2 A district court's review of a final decision of the Commissioner of Social
3 Security is governed by 42 U.S.C. § 405(g). The scope of review under § 405(g) is
4 limited: The Commissioner's decision will be disturbed "only if it is not supported
5 by substantial evidence or is based on legal error." *Hill v. Astrue*, 698 F.3d 1153,
6 1158-59 (9th Cir. 2012) (citing 42 U.S.C. § 405(g)). "Substantial evidence" means
7 relevant evidence that "a reasonable mind might accept as adequate to support a
8 conclusion." *Id.* at 1159 (quotation and citation omitted). Stated differently,
9 substantial evidence equates to "more than a mere scintilla[,] but less than a
10 preponderance." *Id.* (quotation and citation omitted). In determining whether this
11 standard has been satisfied, a reviewing court must consider the entire record as a
12 whole rather than searching for supporting evidence in isolation. *Id.*

13 In reviewing a denial of benefits, a district court may not substitute its
14 judgment for that of the Commissioner. *Edlund v. Massanari*, 253 F.3d 1152,
15 1156 (9th Cir. 2001). If the evidence in the record "is susceptible to more than one
16 rational interpretation, [the court] must uphold the ALJ's findings if they are
17 supported by inferences reasonably drawn from the record." *Molina v. Astrue*, 674
18 F.3d 1104, 1111 (9th Cir. 2012). Further, a district court "may not reverse an
19 ALJ's decision on account of an error that is harmless." *Id.* An "error is harmless
20 where it is 'inconsequential to the ultimate nondisability determination.'" *Id.* at

1 1115 (citation omitted). The party appealing the ALJ's decision generally bears
2 the burden of establishing that it was harmed. *Shinseki v. Sanders*, 556 U.S. 396,
3 409-10 (2009).

4 **FIVE STEP SEQUENTIAL EVALUATION PROCESS**

5 A claimant must satisfy two conditions to be considered "disabled" within
6 the meaning of the Social Security Act. First, the claimant must be unable "to
7 engage in any substantial gainful activity by reason of any medically determinable
8 physical or mental impairment which can be expected to result in death or which
9 has lasted or can be expected to last for a continuous period of not less than 12
10 months." 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). Second, the claimant's
11 impairment must be "of such severity that [he or she] is not only unable to do [his
12 or her] previous work[,] but cannot, considering [his or her] age, education, and
13 work experience, engage in any other kind of substantial gainful work which exists
14 in the national economy." 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

15 The Commissioner established a five-step sequential analysis to determine
16 whether a claimant satisfies the above criteria. See 20 C.F.R. § 416.920(a)(4)(i)-
17 (v). At step one, the Commissioner considers the claimant's work activity. 20
18 C.F.R. § 416.920(a)(4)(i). If the claimant is engaged in "substantial gainful
19 activity," the Commissioner must find that the claimant is not disabled. 20 C.F.R.
20 § 416.920(b).

1 If the claimant is not engaged in substantial gainful activities, the analysis
2 proceeds to step two. At this step, the Commissioner considers the severity of the
3 claimant's impairment. 20 C.F.R. § 416.920(a)(4)(ii). If the claimant suffers from
4 "any impairment or combination of impairments which significantly limits [his or
5 her] physical or mental ability to do basic work activities," the analysis proceeds to
6 step three. 20 C.F.R. § 416.920(c). If the claimant's impairment does not satisfy
7 this severity threshold, however, the Commissioner must find that the claimant is
8 not disabled. *Id.*

9 At step three, the Commissioner compares the claimant's impairment to
10 several impairments recognized by the Commissioner to be so severe as to
11 preclude a person from engaging in substantial gainful activity. 20 C.F.R.
12 § 416.920(a)(4)(iii). If the impairment is as severe or more severe than one of the
13 enumerated impairments, the Commissioner must find the claimant disabled and
14 award benefits. 20 C.F.R. § 416.920(d).

15 If the severity of the claimant's impairment does meet or exceed the severity
16 of the enumerated impairments, the Commissioner must pause to assess the
17 claimant's "residual functional capacity." Residual functional capacity ("RFC"),
18 defined generally as the claimant's ability to perform physical and mental work
19 activities on a sustained basis despite his or her limitations (20 C.F.R.
20 § 416.945(a)(1)), is relevant to both the fourth and fifth steps of the analysis.

1 At step four, the Commissioner considers whether, in view of the claimant's
2 RFC, the claimant is capable of performing work that he or she has performed in
3 the past ("past relevant work"). 20 C.F.R. § 416.920(a)(4)(iv). If the claimant is
4 capable of performing past relevant work, the Commissioner must find that the
5 claimant is not disabled. 20 C.F.R. § 416.920(f). If the claimant is incapable of
6 performing such work, the analysis proceeds to step five.

7 At step five, the Commissioner considers whether, in view of the claimant's
8 RFC, the claimant is capable of performing other work in the national economy.
9 20 C.F.R. § 416.920(a)(4)(v). In making this determination, the Commissioner
10 must also consider vocational factors such as the claimant's age, education and
11 work experience. *Id.* If the claimant is capable of adjusting to other work, the
12 Commissioner must find that the claimant is not disabled. 20 C.F.R.
13 § 416.920(g)(1). If the claimant is not capable of adjusting to other work, the
14 analysis concludes with a finding that the claimant is disabled and is therefore
15 entitled to benefits. *Id.*

16 The claimant bears the burden of proof at steps one through four above.
17 *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the analysis proceeds to
18 step five, the burden shifts to the Commissioner to establish that (1) the claimant is
19 capable of performing other work; and (2) such work "exists in significant

1 numbers in the national economy.” 20 C.F.R. § 416.960(c)(2); *Beltran v. Astrue*,
2 700 F.3d 386, 389 (9th Cir. 2012).

3 ALJ’S FINDINGS

4 On April 10, 2017, Plaintiff filed applications for Title II period of disability
5 and disability insurance benefits and Title XVI supplemental security income
6 benefits. Tr. 16. The applications were denied initially, Tr. 166-169, and on
7 reconsideration, Tr. 175-178. Plaintiff appeared at a hearing before an
8 administrative law judge (“ALJ”) on March 26, 2019. Tr. 68-113. At the hearing,
9 Plaintiff made a motion to dismiss the claim for Title II benefits based on her
10 disability insured status at the date of onset, which the ALJ granted. Tr 16. On
11 April 11, 2019, the ALJ denied Plaintiff’s Title XVI claim. Tr. 16-27.

12 At step one of the sequential evaluation process, the ALJ found Plaintiff had
13 not engaged in substantial gainful activity since April 10, 2017, the application
14 date. Tr. 18. At step two, the ALJ found Plaintiff had the following severe
15 impairments: generalized anxiety disorder, post-traumatic stress disorder,
16 unspecified depressive disorder, and unspecified neurocognitive disorder. *Id.* At
17 step three, the ALJ found Plaintiff did not have an impairment or combination of
18 impairments that meets or medically equals the severity of a listed impairment. Tr.
19 19. The ALJ then found Plaintiff had the RFC to perform a full range of work at
20 all exertional levels with the following nonexertional limitations: “she can have

1 only occasional interaction with the public; she needs a routine, predictable work
2 environment with no more than occasional changes; she cannot do forced-pace or
3 fast-paced work; and for any complex tasks, she would require written
4 instructions.” Tr. 20.

5 At step four, the ALJ found Plaintiff was not capable of performing past
6 relevant work. Tr. 25. At step five, the ALJ found that, considering Plaintiff’s
7 age, education, work experience, RFC, and testimony from a vocational expert,
8 there were other jobs that existed in significant numbers in the national economy
9 that Plaintiff could perform such as cleaner, housekeeping. Tr. 25-26. The ALJ
10 concluded Plaintiff was not under a disability, as defined in the Social Security
11 Act, from April 10, 2017 through March 11, 2019, the date of the ALJ’s decision.
12 Tr. 26-27.

13 On January 8, 2020, the Appeals Council denied review, Tr. 1-4, making the
14 ALJ’s decision the Commissioner’s final decision for purposes of judicial review.
15 See 42 U.S.C. § 1383(c)(3).

16 ISSUES

17 Plaintiff seeks judicial review of the Commissioner’s final decision denying
18 her supplemental security income benefits under Title XVI of the Social Security
19 Act. Plaintiff raises the following issues for this Court’s review:

20 1. Whether the ALJ properly evaluated Plaintiff’s symptom testimony; and

2. Whether the ALJ properly weighed the medical opinion evidence;

ECF No. 11 at 14.

DISCUSSION

A. Plaintiff's Symptom Testimony

Plaintiff contends the ALJ failed to rely on clear and convincing reasons to discredit her symptom testimony. ECF No. 11 at 14-16.

An ALJ engages in a two-step analysis to determine whether to discount a claimant’s testimony regarding subjective symptoms. Social Security Ruling (“SSR”) 16-3p, 2016 WL 1119029, at *2. “First, the ALJ must determine whether there is ‘objective medical evidence of an underlying impairment which could reasonably be expected to produce the pain or other symptoms alleged.’” *Molina*, 674 F.3d at 1112 (quoting *Vasquez v. Astrue*, 572 F.3d 586, 591 (9th Cir. 2009)). “The claimant is not required to show that her impairment ‘could reasonably be expected to cause the severity of the symptom she has alleged; she need only show that it could reasonably have caused some degree of the symptom.’” *Vasquez*, 572 F.3d at 591 (quoting *Lingenfelter v. Astrue*, 504 F.3d 1028, 1035-36 (9th Cir. 2007)).

Second, “[i]f the claimant meets the first test and there is no evidence of malingering, the ALJ can only reject the claimant’s testimony about the severity of the symptoms if [the ALJ] gives ‘specific, clear and convincing reasons’ for the

1 rejection.” *Ghanim v. Colvin*, 763 F.3d 1154, 1163 (9th Cir. 2014) (citations
2 omitted). General findings are insufficient; rather, the ALJ must identify what
3 symptom claims are being discounted and what evidence undermines these claims.
4 *Id.* (quoting *Lester v. Chater*, 81 F.3d 821, 834 (9th Cir. 1995)); *Thomas v.*
5 *Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002) (requiring the ALJ to sufficiently
6 explain why he or she discounted claimant’s symptom claims). “The clear and
7 convincing standard is the most demanding required in Social Security cases.”
8 *Garrison v. Colvin*, 759 F.3d 995, 1015 (9th Cir. 2014) (quoting *Moore v. Comm’r*
9 *of Soc. Sec. Admin.*, 278 F.3d 920, 924 (9th Cir. 2002)).

10 Factors to be considered in evaluating the intensity, persistence, and limiting
11 effects of a claimant’s symptoms include: (1) daily activities; (2) the location,
12 duration, frequency, and intensity of pain or other symptoms; (3) factors that
13 precipitate and aggravate the symptoms; (4) the type, dosage, effectiveness, and
14 side effects of any medication an individual takes or has taken to alleviate pain or
15 other symptoms; (5) treatment, other than medication, an individual receives or has
16 received for relief of pain or other symptoms; (6) any measures other than
17 treatment an individual uses or has used to relieve pain or other symptoms; and (7)
18 any other factors concerning an individual’s functional limitations and restrictions
19 due to pain or other symptoms. SSR 16-3p, 2016 WL 1119029, at *7; 20 C.F.R. §
20 416.929(c)(3). The ALJ is instructed to “consider all of the evidence in an

1 individual's record," "to determine how symptoms limit ability to perform work-
2 related activities." SSR 16-3p, 2016 WL 1119029, at *2.

3 The ALJ found Plaintiff's impairments could reasonably be expected to
4 cause the alleged symptoms; however, Plaintiff's statements concerning the
5 intensity, persistence, and limiting effects of those symptoms were not entirely
6 consistent with the evidence. Tr. 21.

7 1. *Objective Medical Evidence*

8 The ALJ found Plaintiff's symptom complaints inconsistent with the
9 objective medical evidence in the record. Tr. 21. An ALJ may not discredit a
10 claimant's symptom testimony and deny benefits solely because the degree of the
11 symptoms alleged is not supported by objective medical evidence. *Burch v.*
12 *Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005); *Rollins v. Massanari*, 261 F.3d 853,
13 856-857 (9th Cir. 2001); *Bunnell v. Sullivan*, 947 F.2d 341, 346-47 (9th Cir. 1991);
14 *Fair v. Bowen*, 885 F.2d 597, 601 (9th Cir. 1989). However, the objective medical
15 evidence is a relevant factor, along with the medical source's information about the
16 claimant's pain or other symptoms, in determining the severity of a claimant's
17 symptoms and their disabling effects. *Rollins*, 261 F.3d at 857; 20 C.F.R. §
18 416.929(c)(2). Mental status examinations are objective measures of an
19 individual's mental health. *Buck v. Berryhill*, 869 F.3d 1040, 1049 (9th Cir. 2017).

1 The ALJ detailed why Plaintiff's reported level of disabling symptoms
2 conflicted with the objective medical evidence. First, the ALJ found the objective
3 medical evidence and clinical observations largely unremarkable. Tr. 21-22 (citing
4 Tr. 436-437 (well-groomed appearance, good hygiene, appropriate motor activity,
5 good eye contact, appropriate mood, cooperative attitude, good impulse control,
6 limited insight, fair attention, goal-directed thought process, appropriate thought
7 content, no hallucinations, and no delusions), Tr. 518 (alert and cooperative,
8 normal mood and affect, and normal attention span and concentration), Tr. 544-
9 546 (appropriately attired, verbally spontaneous, friendly, pleasant, polite,
10 cooperative, compliant, positive mood, bright affect), Tr. 587-588 (hygiene within
11 normal limits, generally logical and progressive, cooperative, and seemingly open),
12 Tr. 622 (alert, cooperative, and appropriate affect)). The ALJ found this record did
13 not support the level of limitation Plaintiff claimed due to depression, multiple
14 mental health issues, social anxiety, panic attacks, learning disability, mood
15 disorder, ADD, borderline personality disorder and bipolar disorder, agoraphobia,
16 and persistent hallucinations which allegedly limited her inability to lift, bend,
17 stand, reach, kneel, talk, hear, see, remember, complete tasks, understand, follow
18 instructions, use her hands, get along with others, leave the house, focus,
19 concentrate, and work with others. Tr. 21 (citing Tr. 323-330, 331-342, 372-379,
20 380-387). Second, the ALJ noted there were no observations of panic attacks,

1 hypomanic behavior, or irritability in the record, which was inconsistent with
2 Plaintiff's allegations of frequent panic attacks, depressive and manic episodes,
3 and daily mood swings causing persistent anger and irritability. Tr. 22. The ALJ
4 reasonably concluded that this evidence was inconsistent with Plaintiff's
5 allegations of disabling mental health conditions. Tr. 23. This finding is supported
6 by substantial evidence.

7 Plaintiff argues that her claimed symptoms are fully supported by diagnoses
8 recorded by her counselors, treating physician, and examining psychologists. ECF
9 No. 11 at 16. Plaintiff argues that the medical providers "would have" had
10 opportunities to observe Plaintiff's alleged symptoms. ECF No. 11 at 15. In her
11 reply, Plaintiff cites to one specific instance from September 18, 2013 where Dr.
12 Charles Haigh, MD observed Plaintiff experiencing increasing depression, had
13 trouble speaking, her mouth was drooping, and she had weakness on her left side
14 with twitching, and had difficulty walking. ECF No. 13 at 4 (citing Tr. 494). It is
15 the ALJ's responsibility to resolve conflicts in the medical evidence. *Andrews v.*
16 *Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). Plaintiff's cited evidence does not
17 overturn the ALJ's rational interpretation of the remaining evidence in the record.
18 *Burch*, 400 F.3d at 679 ("Where evidence is susceptible to more than one rational
19 interpretation, it is the ALJ's conclusion that must be upheld.").

1 In her opening brief, Plaintiff also appears to argue that the ALJ solely
2 discredited Plaintiff's alleged symptoms on the basis of the medical expert's
3 testimony. ECF No. 11 at 15. To the contrary, the ALJ discounted Plaintiff's
4 alleged symptoms for other reasons, including Plaintiff's course of treatment, daily
5 activities, medical opinion evidence, and work history and motivation. Tr. 21-23;
6 *see Vertigan v. Halter*, 260 F.3d 1044, 1050 (9th Cir. 2001) (upholding the ALJ
7 where "the ALJ here considered other factors and found additional reasons for
8 discrediting Plaintiff's subjective symptom testimony.").

9 2. *Course of Treatment*

10 The ALJ found Plaintiff's alleged symptoms inconsistent with her course of
11 treatment. Tr. 22. The claimant's course of treatment is a relevant factor in
12 determining the severity of alleged symptoms. 20 C.F.R. § 416.929(c)(3). The
13 unexplained or inadequately explained failure to seek treatment or follow a
14 prescribed course of treatment may serve as a basis to discount a claimant's alleged
15 symptoms. *Orn v. Astrue*, 495 F.3d 625, 638 (9th Cir. 2007).

16 Here, the ALJ found that Plaintiff's course of treatment inconsistent with
17 her disability allegations. Tr. 22. In June 2017, Children's Home Society ("CHS")
18 discharged Plaintiff after Plaintiff completed several short-term goals, made
19 significant progress in her ability to complete daily functioning without
20 intervention services, and no longer met medical necessity. Tr. 538-539. At

1 discharge, Plaintiff reported “everything is pretty much the same, you have really
2 helped me a lot even though I am not on medication I think I do pretty good most
3 of the time.” Tr. 539. At the hearing, Plaintiff told the ALJ that she left CHS
4 because she required a higher level of care, no Medicaid providers within her
5 comfort range existed, and she did not like other providers or find them helpful.
6 Tr. 89-91. The ALJ noted that where Plaintiff “claimed she discontinued with
7 Children’s Home Society in 2017 because she needed a higher level of care, but
8 the record shows that, instead of a higher level of care, she got virtually no care for
9 the next year … obviously some care would have been better than no care for
10 someone who was as symptomatic as [Plaintiff] alleges she was.” Tr. 22 (citing
11 Tr. 590- 618 (records of sporadic treatment in 2018)).

12 The ALJ reasonably concluded that Plaintiff’s failure to receive treatment
13 after discharge where she claimed she needed a higher level of care was
14 inconsistent with the severity of symptoms Plaintiff alleged. This unchallenged
15 finding is supported by substantial evidence.

16 3. *Daily Activities*

17 The ALJ found that Plaintiff’s alleged symptoms were inconsistent with her
18 daily activities. Tr. 23. The ALJ may consider a claimant’s activities that
19 undermine reported symptoms. *Rollins*, 261 F.3d at 857. If a claimant can spend a
20 substantial part of the day engaged in pursuits involving the performance of

1 exertional or non-exertional functions, the ALJ may find these activities
2 inconsistent with the reported disabling symptoms. *Fair v. Bowen*, 885 F.2d 597,
3 603 (9th Cir. 1989); *Molina*, 674 F.3d at 1113. “While a claimant need not
4 vegetate in a dark room in order to be eligible for benefits, the ALJ may discredit a
5 claimant’s testimony when the claimant reports participation in everyday activities
6 indicating capacities that are transferable to a work setting” or when activities
7 “contradict claims of a totally debilitating impairment.” *Molina*, 674 F.3d at 1112-
8 13 (internal citation and quotation marks omitted).

9 Here, the ALJ found that Plaintiff had high-functioning activities of daily
10 living that are inconsistent with the extreme limitations she alleged. Tr. 23. For
11 example, Plaintiff cares for her children, one of whom has a disability, along with
12 several pets, as well as vacuums, does laundry, cleans the house, cooks fresh
13 meals, rides the bus, shops in stores, and gardens. *See* Tr. 331-341, 524, 547-548,
14 585, 621. The ALJ also found that while Plaintiff alleges she is essentially
15 housebound unless accompanied out, has frequent panic attacks away from home,
16 and is very irritable and completely unable to get along with others, Plaintiff is able
17 to attend her children’s school functions, is able to take the bus by herself, and in
18 May 2017 stated she “went to the company BBQ and spent time with the work
19 families and I really did okay. I felt really comfortable.” *Compare* Tr. 331-341,
20 541, 93-102 *with* Tr. 524, 535, 544. The ALJ found her activities wholly

1 inconsistent with her claims of extreme paranoia, panic attacks, agoraphobia, and
2 other claimed social limitations. Tr. 535.

3 The ALJ reasonably concluded that these activities contradicted Plaintiff's
4 claims of totally debilitating impairments. This finding is supported by substantial
5 evidence. While a different interpretation could be made as to whether these
6 activities are consistent with Plaintiff's ability to sustain fulltime work, the ALJ
7 articulated several other supported grounds for discounting Plaintiff's reported
8 symptoms. *See Carmickle v. Commissioner*, 533 F.3d 1155, 1163 (9th Cir. 2008).

9 4. *Medical Opinion Evidence*

10 The ALJ found that Plaintiff's alleged symptoms inconsistent with the
11 medical expert's testimony. Tr. 22. The ALJ may discount a claimant's
12 statements if the claimant's subjective testimony is contradicted by medical
13 opinion evidence. *See Carmickle*, 533 F.3d at 1161.

14 Here, the ALJ noted reliance on the opinion of Dr. Nicole Martinez, Psy.D.,
15 a board-certified clinical psychologist who testified at the hearing as an impartial
16 psychological medical expert. Tr. 22 (hearing testimony at Tr. 68-113). Dr.
17 Martinez was present at the hearing by telephone and reviewed all the medical
18 exhibits of record before testifying. *Id.* Dr. Martinez stated that Plaintiff suffered
19 from severe mental impairments of generalized anxiety disorder, PTSD,
20 unspecified depressive disorder, and unspecified neurocognitive disorder. *Id.* Dr.

1 Martinez noted that testing showed mild cognitive difficulties and Plaintiff has
2 alluded to panic attacks as impairing her ability to understand and remember. *Id.*
3 However, Dr. Martinez noted that Plaintiff has not sought treatment consistent with
4 her alleged issues, takes no medication, and the record documents no more than
5 moderate limitations. *Id.* While Plaintiff described extreme symptoms, Dr.
6 Martinez cited a lack of corroborating treatment evidence. *Compare* Tr. 93, 96-
7 101 *with* Tr. 80-81. Additionally, while Plaintiff claimed she could rarely leave
8 her house, Dr. Martinez found that she could tolerate occasional interactions with
9 the public based on the lack of panic disorder diagnosis or lack of sufficient
10 evidence to show consistent panic attacks. *Compare* Tr. 96 *with* Tr. 82-83.

11 The ALJ reasonably concluded that the medical expert testimony
12 contradicted Plaintiff's claims of totally debilitating impairments. Therefore, this
13 finding is supported by substantial evidence.

14 5. *Work History*

15 The ALJ found that Plaintiff has a weak work history and poor work
16 motivation. Tr. 23. Evidence of a poor work history that suggests a claimant is not
17 motivated to work is a permissible reason to discredit a claimant's testimony that
18 she is unable to work. *Thomas*, 278 F.3d at 959; 20 C.F.R. § 416.929(c)(3). When
19 considering a claimant's contention that she cannot work because of her
20 impairments, it is appropriate to consider whether the claimant has not worked for

1 reasons unrelated to her alleged disability. *See Tommasetti v. Astrue*, 533 F.3d
2 1035, 1040 (9th Cir. 2008); *Bruton v. Massanari*, 268 F.3d 824, 828 (9th Cir.
3 2001) (sufficient reasons for disregarding subjective testimony included stopping
4 work for nonmedical reasons).

5 Here, the ALJ noted that Plaintiff has a weak work history and her
6 statements to providers suggests that her ongoing unemployment is likely
7 something of longer standing duration than current medical impairments. Tr. 23.
8 The ALJ cited Plaintiff's statements to providers; for example, in 2013 the
9 provider noted “[Plaintiff] feels she can't work – partly from pain, partly because
10 she has worked since she was 12, and feels she is done working. She doesn't need
11 to anymore.” Tr. 443; *see also* Tr. 548. Therefore, this unchallenged finding is
12 supported by substantial evidence.

13 The ALJ's conclusion based on several findings that Plaintiff's subjective
14 symptom testimony conflicted with the evidence was clear, convincing, and
15 properly supported by substantial evidence.

16 **B. Medical Evidence**

17 Plaintiff argues that the ALJ improperly rejected the opinions of Charles
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19
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1 Haigh, MD, William H. Jackline, EdD,¹ John Arnold, PhD, and Desiree Gordon,
2 MS, MHP, CMHS. ECF No. 11 at 17-18.

3 As an initial matter, for claims filed on or after March 27, 2017, new
4 regulations apply that change the framework for how an ALJ must evaluate
5 medical opinion evidence. 20 C.F.R. § 416.920c(c); *see also Revisions to Rules*
6 *Regarding the Evaluation of Medical Evidence*, 2017 WL 168819, 82 Fed. Reg.
7 5844-01 (Jan. 18, 2017). The ALJ applied the new regulations because Plaintiff
8 filed her Title XVI claim after March 27, 2017. *See* Tr. 18-24.

9 Under the new regulations, the ALJ will no longer “give any specific
10 evidentiary weight ... to any medical opinion(s).” *Revisions to Rules*, 2017 WL
11 168819, 82 Fed. Reg. 5844-01, 5867-68. Instead, an ALJ must consider and
12 evaluate the persuasiveness of all medical opinions or prior administrative medical
13 findings from medical sources. 20 C.F.R. § 416.920c(a)-(b). The factors for
14 evaluating the persuasiveness of medical opinions and prior administrative medical
15 findings include supportability, consistency, relationship with the claimant,
16 specialization, and “other factors that tend to support or contradict a medical
17 opinion or prior administrative medical finding” including but not limited to

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19

¹ Plaintiff mistakenly referred to Dr. Jackline as Dr. John Severinghaus, PhD
20 throughout her opening brief. ECF No. 13 at 3.

1 “evidence showing a medical source has familiarity with the other evidence in the
2 claim or an understanding of our disability program’s policies and evidentiary
3 requirements.” 20 C.F.R. § 416.920c(c)(1)-(5).

4 The ALJ is required to explain how the most important factors,
5 supportability and consistency, were considered. 20 C.F.R. § 416.920c(b)(2).
6 These factors are explained as follows:

7 (1) *Supportability.* The more relevant the objective medical evidence and
8 supporting explanations presented by a medical source are to support his
9 or her medical opinion(s) or prior administrative medical finding(s), the
more persuasive the medical opinions or prior administrative medical
finding(s) will be.

10 (2) *Consistency.* The more consistent a medical opinion(s) or prior
11 administrative medical finding(s) is with the evidence from other medical
sources and nonmedical sources in the claim, the more persuasive the
medical opinion(s) or prior administrative medical finding(s) will be.

12
13 20 C.F.R. § 416.920c(c)(1)-(2).

14 The ALJ may, but is not required to, explain how “the other most persuasive
15 factors in paragraphs (c)(3) through (c)(5)” were considered. 20 C.F.R.
16 § 416.920c(c)(b)(2). However, where two or more medical opinions or prior
17 administrative findings “about the same issue are both equally well-supported ...
18 and consistent with the record ... but are not exactly the same,” the ALJ is required
19 to explain how “the most persuasive factors” were considered. 20 C.F.R.
20 § 416.920c(c)(b)(2).

1 The parties dispute whether Ninth Circuit law that predates that new
2 regulations apply. ECF No. 12 at 10; ECF No. 13 at 9. The Ninth Circuit
3 currently requires the ALJ to provide “clear and convincing” reasons for rejecting
4 the uncontradicted opinion of either a treating or examining physician. *Lester v.*
5 *Chater*, 81 F.3d 821, 830 (9th Cir. 1995). When a treating or examining
6 physician’s opinion is contradicted, the Ninth Circuit held the medical opinion can
7 only “be rejected for specific and legitimate reasons that are supported by
8 substantial evidence in the record.” *Id.* at 830-31 (internal citation omitted).

9 At this time, the Ninth Circuit has not addressed whether these standards still
10 apply when analyzing medical opinions under the new regulations. For purposes
11 of the present case, the Court finds that resolution of this issue is unnecessary. *See*
12 *Allen T. v. Saul*, No. EDCV 19-1066-KS, 2020 WL 3510871, at *3 (C.D. Cal. June
13 29, 2020) (citing *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Services*,
14 545 U.S. 967, 981-82 (2005) (“[T]he Court is mindful that it must defer to the new
15 regulations, even where they conflict with prior judicial precedent, unless the prior
16 judicial construction ‘follows from unambiguous terms of the statute and thus
17 leaves no room for agency discretion.’”)).

18 1. *Dr. Nicole Martinez, Psy.D.*

19 The ALJ found Dr. Martinez’s opinion persuasive on the basis that it was
20 well supported and consistent with the other evidence in the record. Tr. 23.

1 Regarding supportability, the ALJ noted Dr. Martinez reviewed the entire
2 medical record, gave reasonable explanations, was available for questioning at the
3 hearing, and the evidence she relied upon fully supported her conclusions. Tr. 23.
4 Dr. Martinez's opinion was based on the submitted treatment records and cited
5 gaps in treatment. Tr. 79-82.

6 Regarding consistency, the ALJ found that the opinion was consistent with
7 and supported by the unremarkable objective medical evidence, clinical
8 observations (Tr. 432-440, 538-539, 540-552, 583-589, 590-618, 619-626), and
9 Plaintiff's daily activities. Tr. 23. The lack of treatment notes prevented Dr.
10 Martinez from finding sufficient evidence to support that certain symptoms, such
11 as panic attacks, occurred on a regular and consistent basis. Tr. 82.

12 Regarding an additional factor, the ALJ found that Dr. Martinez's
13 specialized expertise and SSA program knowledge added to the overall
14 persuasiveness of the opinion. Tr. 23. The ALJ's finding the Dr. Martinez's
15 opinion is persuasive is supported by substantial evidence.

16 2. *Kent Reade, PhD, and Michael Regets, PhD*

17 The ALJ found the opinions of the DDS Psychologists to be less persuasive.
18 Tr. 24. As an initial matter, Plaintiff failed to challenge this finding, thus any
19 challenge is waived, and the Court may decline to review it. *See Carmickle*, 533
20 F.3d at 1161, n. 2. However, the Court finds that the ALJ did not err.

1 Regarding supportability, the ALJ found that Dr. Martinez had a more
2 complete record to review, and gave a more complete and persuasive explanation,
3 as discussed *supra*. Tr. 24. Regarding consistency, the ALJ discounted the
4 opinions because the determination that Plaintiff was limited to 1-2 step tasks was
5 not consistent with the record where the Plaintiff completed 3 step tasks during her
6 psychological evaluation and demonstrated normal concentration, attention, and
7 memory during the DSHS psychological evaluation. Tr. 24. *Compare* Tr. 127-
8 138, 151-164 *with* Tr. 544-546, 587-588. The ALJ's finding that the DDS
9 psychologists' opinions are less persuasive is supported by substantial evidence.

10 3. *Dr. John F. Arnold, Ed.D.*

11 The ALJ found Dr. Arnold's opinion unpersuasive because it lacked
12 supportability and consistency with the evidence. Tr. 24.

13 Regarding supportability, the ALJ found that Dr. Arnold conducted a
14 cursory one-time examination in a secondary gain context where he filled out a
15 checkbox form with no explanation. Tr. 24. This is consistent with Ninth Circuit
16 law that a medical opinion may be rejected by the ALJ if it is brief, conclusory, or
17 inadequately supported. *Bray v. Comm'r of Soc. Sec. Admin*, 554 F.3d at 1219,
18 1228.

19 Regarding consistency, the ALJ found Dr. Arnold's opinion internally
20 inconsistent with his own mental status examination that was "almost entirely

1 unremarkable” in showing that Plaintiff was cooperative with normal hygiene and
2 attire, normal speech, normal thought process and content, normal orientation and
3 perception, normal memory, normal fund of knowledge, normal concentration, and
4 normal insight and judgment. Tr. 24 (citing Tr. 587-588). Additionally, the ALJ
5 found Dr. Arnold’s opinion inconsistent with the largely unremarkable objective
6 findings, Plaintiff’s course of treatment, and Plaintiff’s admitted ability to care for
7 her two children, cook, clean, shop, and take the bus. Tr. 24 (citing Tr. 432-440,
8 538-539, 540-552, 590-618, 619-626). This is consistent with Ninth Circuit law
9 that an ALJ may reject opinions that are internally inconsistent. *Rollins*, 261 F.3d
10 at 856 (upholding the ALJ’s rejection of a doctor’s opinion because it was
11 internally inconsistent). The ALJ’s finding that Dr. Arnold’s opinion is
12 unpersuasive is supported by substantial evidence.

13 4. *Dr. Charles Haigh, M.D. and Desiree Gordon, CMHS*

14 The ALJ found that the opinions from Dr. Haigh and mental health
15 counselor Gordon were unpersuasive because they were “DSHS WorkFirst” form
16 opinions unaccompanied by meaningful explanation or citations to objective
17 evidence. Tr. 24. *See Bray*, 554 F.3d at 1228 (ALJ may reject if opinion is
18 conclusory or inadequately supported).

19 Regarding supportability, the ALJ was not persuaded by these opinions
20 because they provided no meaningful explanation or citation to objective evidence.

1 Tr. 24 (citing Tr. 448-450, 560-582). In contrast, the ALJ was more persuaded by
2 Dr. Martinez's opinion in terms of supportability because Dr. Martinez reviewed
3 the entire record during the period at issue and gave a detailed and persuasive
4 explanation of her opinion. Tr. 24. Regarding consistency, the ALJ found that Dr.
5 Martinez's opinion was more consistent with the record as a whole as discussed
6 *supra*. Tr. 24.

7 As an additional factor, the ALJ noted that these opinions were outside of
8 the relevant period of Plaintiff's disability. Tr. 24. The ALJ may consider any
9 other factor that tends to support or contradict a medical opinion. 20 C.F.R. §
10 416.920c(c)(5). Under Ninth Circuit law, opinions that predate the adjudicative
11 period are of limited relevance. *Carmickle*, 533 F.3d at 1165. The records from
12 Dr. Charles Haigh were created between December 4, 2012, to February 2, 2015.
13 Tr. 441. The records from Ms. Gordon were created between February 19, 2014,
14 to January 10, 2017. Tr. 560-582.

15 Here, Plaintiff argues that the ALJ did not give sufficient reasons to reject
16 these opinions. ECF No. 11 at 7. The ALJ found that the opinions, as forms
17 without explanation or citation, were less supported, consistent, and outside of the
18 relevant period of disability. Tr. 24. The ALJ's finding that Dr. Haigh and Ms.
19 Gordon's opinions are unpersuasive is supported by substantial evidence.

CONCLUSION

Having reviewed the record and the ALJ's findings, this Court concludes the ALJ's decision is supported by substantial evidence and free of harmful legal error.

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Plaintiff's Motion for Summary Judgment (**ECF No. 12**) is **DENIED**.
2. Defendant's Motion for Summary Judgment (**ECF No. 13**) is

GRANTED.

The District Court Executive is directed to enter this Order, enter judgment accordingly, furnish copies to counsel, and **CLOSE** the file.

DATED January 20, 2021.



**THOMAS O. RICE
United States District Judge**